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# The Solicitors' Journal

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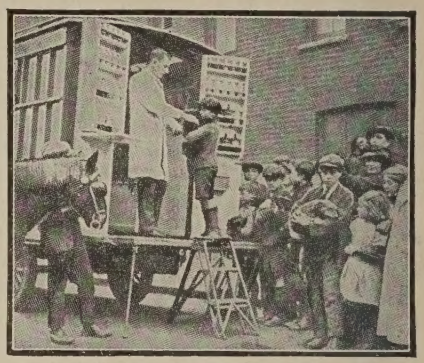

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# The Solicitors' Journal

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VOL. LXXIII. **Saturday, December 21, 1929.** No. 51

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## Current Topics.

### Sheep Worrying.

THE CASE of a farmer who was sued for shooting a dog found worrying a lamb has recently been referred to by the National Farmers' Union in their weekly news sheet. The lamb, which was severely injured, had to be destroyed, and on the facts of the case the farmer was held to have been justified in the shooting. The common law right to shoot in circumstances which leave no doubt as to the offence and the culprit is well established, although not perhaps generally appreciated. In *Daniel* v. *Janes* (1877), 41 J.P. 712, a trespassing dog died as the result of eating poisoned meat after the property owner had warned the dog's master that he intended laying down poison. The magistrate convicted the property owner, but on appeal Lord COLERIDGE, C.J., quashing the conviction, said that s. 41 of 24 & 25 Vict., c. 97, pointed to the unlawful and malicious killing or maiming for the purpose of indulging a wicked and cruel disposition, and not to an act done under the impression, whether right or wrong, that the person doing it was justified in protecting his premises from a trespass by such means, especially after notice given. Referring to the above case, Lord ALVERSTONE, C.J., in *Armstrong* v. *Mitchell*, 67 J.P. 329, said that he would not express any opinion on it, but he thought its full extent might have to be reconsidered if the point ever came up. In the more recent case of *Barnard* v. *Evans* [1925] 2 K.B. 794, the justices found that a dog had been shot with intent to kill, and that as the result of the shooting it was cruelly ill-treated within the meaning of s. 1 of the Protection of Animals Act, 1911. They were of opinion, however, that judicial decisions prevented them from convicting, and they did not do so. On appeal, Lord HEWART, C.J., said that the cases laid down that the question was whether there was necessity for the shooting, and to shoot an animal in circumstances without justification was an offence. Even where there is justification, however, there are no doubt many dog-lovers who will quarrel with the further statement in the Union's news sheet that "on humanitarian, not to speak of economic, grounds we fail to know why the breeding of dogs should be protected more than the breeding of sheep." The seriousness of the matter from the farmers' point of view is readily appreciated when one reads in *The Star* of the 14th inst. that no less than forty-three sheep belonging to three farmers in the Romford district have recently been killed by dogs.

### A Scottish Marriage Tangle.

WHILE INDICATIONS have not been wanting in recent days of a desire on the part of the Scottish churches, and, we believe, of a large majority of the Scottish people, for the abrogation of the law which allows of irregular marriages being contracted by the mere interchange of consent between the parties or without the intervention of either a clergyman or a civil official like the Registrar in England, the difficulties which these matrimonial unions not infrequently create still continue, owing to the absence of satisfactory proof of their having been contracted. Fresh evidence of this is furnished by the recent case of *Courtin* v. *Elder* (1929), Session Notes, pp. 94, 109. That was an action by the pursuer, TRESSIE HENRIETTA COURTIN, claiming a declaration that a ceremony of marriage into which she had entered with the defender, JAMES ELDER, was a nullity by reason of the fact that at the time of the pretended marriage JAMES ELDER was already married and that his wife was still alive. The pursuer further claimed a declaration that the marriage of ELDER with one ANNIE COLLINS was a valid marriage. The pursuer alleged that after having gone through a ceremony of marriage with ELDER *in facie ecclesiæ* she learnt that he had been previously married by declaration *per verba de præsenti* in 1924 in the office of a solicitor in Glasgow who was described by the Lord Ordinary, who tried the case in the first instance, as having "carried on work as a marriage broker." The question then was whether that was a valid marriage. The woman whom ELDER then purported to take as his wife admitted the exchange of declarations, but stated that she thought afterwards that as the marriage was not registered it was not valid. The Lord Ordinary held that the pursuer, TRESSIE HENRIETTA COURTIN, had failed to establish that a valid marriage had been contracted between ELDER and the woman, ANNIE COLLINS, in 1924. That decision has, however, been reversed on appeal, the Second Division of the Court of Session holding that the doubt subsequently created in the mind of ANNIE COLLINS owing to the non-registration of the marriage did not detract from the effect of the previous interchange of consent between her and ELDER which therefore constituted a valid marriage. In view of such proceedings it is surely time that irregular marriages should no longer be competent. Very often no steps are taken to register them, with the consequence that it is difficult, and sometimes impossible, to prove them. For those who have no wish for a religious ceremony, why should not civil marriages be introduced and so regularise the whole position?

### A Russian Soviet Marriage Invalid in English Law.

THE JUDGMENT of Mr. Justice HILL in *Nachimson* v. *Nachimson* (*The Times*, 18th inst.), in which he has held that "marriage" under the laws of the U.S.S.R. is not a marriage within the meaning of English law, is a pronouncement of significance having regard to the comity of nations. The

learned judge has said that these "marriages" of persons in accordance with the law of the Soviet are incapable of creating the status of marriage as accepted by countries acting on principles of Christian morality. He bases his decision principally upon the definition of marriage given by Lord PENZANCE in *Hyde* v. *Hyde and Woodmanoll* (1866), L.R. 1 P. & D. 130, as being "the voluntary union for life of one man and one woman to the exclusion of all others," and upon the speech of Lord BROUGHAM in *Warrender* v. *Warrender*, 2 Cl. & Fin. 488. A passage in which, at p. 532, is as follows: "But marriage is one and the same thing substantially all the Christian world over. Our whole law of marriage assumes this, and we regard it as a wholly different thing, a different status, from Turkish or other marriages among infidel nations, because we clearly never should recognise the plurality of wives and consequent validity of second marriages, the first standing, which second marriages the laws of those countries authorise and validate. This cannot be put upon any rational ground, except our holding the infidel marriage to be something different from the Christian, and our also holding Christian marriages to be the same everywhere. Therefore all that the courts of our country have to determine is, whether or not the thing called marriage, that known relation of persons . . . has been validly contracted in the other country where the parties professed to bind themselves." His Lordship in concluding his judgment said that he was fully conscious of the difficulties that would arise from refusing to recognise a Russian marriage as a marriage, but that the difficulties had been imposed by the Soviet law "which had cut itself adrift from the view of marriage hitherto held by civilised communities." A moment's reflection suggests a host of interesting situations that may arise with regard to Russian women living in this country under the protection of men to whom they have united themselves in "marriage" in accordance with the Soviet law. Presumably they will be unable to obtain maintenance orders and may be incarcerated for debt.

### The Goddard Case.

WE MAY, perhaps, concur in the general verdict of the Press that, while it is regrettable that a corrupt officer should be allowed to retain so large a sum as £9,000 after proof that he had been freely accepting bribes for violating his duty, no other order would have been consistent with our first principle of administering justice, That principle is that an accused person shall not be obliged to exculpate himself, but guilt must be proved affirmatively, and, in respect of the larger part of the money discovered in GODDARD'S *caches* and retained by Lord BYNG, proof that it represented bribes was not forthcoming. ROWLATT, J., in effect, rebuked Lord BYNG for retaining the money, but, on the principle of "*respondeat superior*," Lord BRENTFORD has publicly stated that Lord BYNG did so pursuant to his directions, after he had consulted the Law Officers of the Crown for the time being. On the justifiable assumption, therefore, that the latter advised the retention, we may observe that they gave a somewhat hasty opinion. If so, of course, they are not the first Law Officers whose opinions have been received with scanty favour on the Bench, nor are likely to be the last. It is of interest to observe that evidence was given by one QUINTAVALLA that he bribed GODDARD up to £2,000, but the notes could not be traced. The judgment as reported in *The Times*, 13th inst., is not quite clear as to how the judge treated this money, but it does seem as if he gave the Crown credit for the bulk of it, apparently as a set-off to GODDARD'S claim. Possibly the Crown might have obtained a larger judgment if they had made it worth the while of other persons who had bribed GODDARD to come forward and establish the fact, and, if the above deduction as to QUINTAVALLA'S money is correct, it is still open to the Crown to claim from GODDARD any further money which can be proved to have been received by him in bribery. Notoriously, however, it is very difficult to establish such proof if the recipient has the common-sense to avoid bank-notes, and the more cunning offenders will even require that Treasury notes shall not be handed to them in a consecutively numbered sequence.

### "Hurting" Stock.

IT IS reported from America that a multi-millionaire has been charged with "hurting" the stock of a group of companies in rivalry with his own by deceptive statements. The prosecutors complain that their stock depreciated by £1,000,000 following his campaign, which also forced them to withdraw a new issue of £2,000,000. The charge is certainly an unusual one, but, framed as conspiracy, not without precedent in the English Courts. The classical case is, of course, *R.* v. *De Berenger and others* (1814), 3 M. & S. 67, one of the "others" being Lord COCHRANE, the great admiral. The charge was of conspiring by false rumours to raise the price of Government funds on a particular day "with intent to injure the subjects who should purchase them," and the offence was held indictable. Lord COCHRANE, who throughout very strongly protested his innocence, was fined £1,000, which, the story goes, he paid by a single bank-note. Obviously the case stands as authority that a similar conspiracy to lower prices would be indictable, and that would seem the more likely, but in fact the other two notable cases were both charges of conspiracy to raise. *R.* v. *Gurney* (1869), 11 Cox C.C. 414, concerned the notorious OVEREND GURNEY flotation, and the directors were accused of conspiring to make false statements as to the company's position and prospects. The prosecution was something of a novelty in those days on the birth of a company, but would now fall under the ordinary law as to the prospectus. In *Scott* v. *Brown* [1892] 2 Q.B. 724, there was an agreement to "rig the market" by a fictitious dealing in shares, and the contract to carry it out was held void. In *R.* v. *Aspinall* (1876), 2 Q.B.D. 48, there was a conspiracy to obtain a stock exchange quotation, and *R.* v. *De Berenger* was followed. As to whether an indictment may be made against one person, *R.* v. *Hilbers* (1818), 2 Chit. 163, hardly appears authority, for the indictment there was against one person for conspiring, and was naturally bad. The Act which abolished the offence of "cornering," 7 & 8 Vict. c. 24, contained a saving in respect of the offence of "knowingly and fraudulently spreading, or conspiring to spread, any false rumour, with intent to enhance or decry the price of any goods or merchandise." The cases appear to extend the offence to stocks and shares as "vendible commodities," so possibly an indictment might lie against one only. One who "beared" shares of a company by false rumours would probably libel it in the process, in which case a civil action would lie: see *Metropolitan Saloon Omnibus Co.* v. *Hawkins* (1859), 4 H. & N. 87.

### The Right to Lie.

WE HAVE recently had a somewhat lurid case from across the Channel of "the right to kill." Now we are treated to a novelty from that country of novelties, the United States of America—"the right to lie"—in the witness box. "A woman," said Judge MARCUS KAVANAUGH of Chicago, "is entitled to lie if she thus protects her honour and her name." And at a later stage the same learned judge laid down that "there are circumstances when a woman does not have to tell the truth," particularly "where a falsehood materially hurts nobody else." This is surely carrying the chivalrous instincts of man somewhat far. But perhaps we are doing the learned judge an injustice. May there not be times when a man "is entitled to lie" if he thus protects his honour and his name? It may perhaps be hopeless to test the question in a country which has a Slander of Women Act without any equivalent statutory provision for men, but perhaps some unselfish male reader will benefit his kind by testing, within the jurisdiction of Judge MARCUS KAVANAUGH, whether that learned judge's chivalrous instincts are or are not confined to women.

# Criminal Law and Police Court Practice.

ORIGINALITY IN PUNISHMENT.—"A little thought," wrote the late Dr. Mercier, "a little ingenuity, might make punishments far more efficacious by adapting them more suitably to the character of the crime." There is about our modern methods a singular lack of originality: probation, fine, imprisonment, and occasionally flogging, are the stock expedients. A little variety creeps in when a motorist has his licence suspended or an alien is deported, but generally speaking we seem barren of ideas.

The older punishments were cruder and often brutal. We need not sigh for the return of the scold's bridle, the ducking-stool, the pillory, or the stocks. We might, however, consider the expediency of inflicting some form of public disgrace on some classes of offenders. It is often urged that fraudulent tradesmen might be compelled to exhibit prominently in their own shops particulars of their own convictions. It is not, perhaps, generally remembered that the Weights and Measures Acts confer power on a court to cause a conviction under those Acts to be published in such manner as it thinks desirable. The power is rarely, if ever, exercised.

We may not often feel inclined to take a hint from Russia, but the *Evening Standard* has just given some particulars of the Russian way of dealing with careless or lazy workmen in factories which might be applied, with necessary modifications, to certain kinds of offenders against the law in this country. In the factories are notice-boards. Ivan breaks a bobbin: his name is posted and the broken bobbin is put beside it with an intimation that such a careless workman is an enemy of his country. Better still is the account of Nicolai, who comes often late: a large drawing of him has this caption—"This is Nicholai Nicolaivitch, of department seven. He has been late four days in succession. Take a good look at him, for, if he is late once more, you may never see him again."

In Roumania, the police parade reckless motorists about the streets, with a disparaging placard on them. *The Times*, in recording the fact, added the suggestion that if this does not shame them they might be deprived of the safety of the pavement and made to walk in the road as a deterrent example to other potential offenders.

One cannot withhold a measure of admiration for the people who think of these picturesque and novel expedients.

SNORING LEGALLY CONSIDERED.—It is stated in a morning paper that one DUBOIS was fined ten dollars in a village near Ottawa for snoring in church. This may raise the question whether one who snored at a service in England, Anglican or otherwise, would commit the offence of brawling. There is no direct authority on the point, but it is submitted with some confidence that *Williams* v. *Glenister* (1824), 2 B. & C. 699, may be cited to show that the contrary would be held. ABBOTT, C.J., there laid down that to be within the statute the party must maliciously, wilfully, or of purpose molest the person celebrating divine service. He must in fact be guilty of violent or indecent behaviour, and it may be confidently urged that snoring is not behaviour at all. Behaviour and misbehaviour imply volition, which is not exercised in this act. Snoring is a method of breathing adopted during slumber by certain persons, and no doubt is parol evidence of a sleeper's state, but evidence which those about him would be glad to reject if they had the opportunity of doing so. The plaintive reply of the boarder in a house with thin walls to the observation that it rained heavily during the night may be recollected, that he would not have minded that if it had not snored so hard. The story of the widow who could only procure sleep when a coffee-grinder was placed on the late lamented's pillow and worked *largo* all night may perhaps be rejected as apocryphal.

# Company Law and Practice.

VIII.

LAST week the opinion was ventured in this column that directors would be wise to disclose to the companies of which they are directors full lists of their shareholdings, whether they hold the shares beneficially or as trustee, in any companies with which the companies of which they are directors may be at all likely to deal; and there might be added the rider that, in the case of joint holdings, this should be so whether the name of the director comes first or not, as it does not seem to be material whether the right to vote in respect of those shares is, as far as the company is concerned, vested in some other person.

The suggestion has been made that in any event this disclosure is only necessary in cases where the contract or proposed contract is to be considered by the board, and that the usual business transactions of the company, put through in the ordinary way by the persons who usually act for the company, need not be considered in attempting to comply with this section, and the wording of sub-s. (2) certainly affords some ground for supporting this view. Its opening words are "In the case of a proposed contract the declaration . . . shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he becomes so interested . . ." Thus, where a director is interested in a proposed contract, the section contemplates a board meeting to consider it, but the rest of the section, dealing with a declaration of interest arising after contract made, merely requires a declaration at the first board meeting held after the director becomes interested.

It would seem to be a somewhat curious result that disclosure should be necessary in the case of all contracts actually entered before the interest is acquired, but in the case of contemplated contracts only if they come before the board for consideration; and the only safe thing to do is to treat interests in all contracts, proposed or actually entered into, as disclosable.

Now that the question of shareholding in a company has been considered, it must be seen what other interests there are which require disclosure. It is obvious from s. 149 that to be a partner in a contracting firm is such an interest; sub-s. (3) uses the expression "a member of a specified . . . firm." Article 72 of Table A, however, does not look upon a partner in a firm with such favour as a shareholder in a company; it provides that the office of director shall be vacated if the director (*inter alia*) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company; this is, however, qualified by a proviso that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he has declared the nature of his interest in manner required by s. 149, though he must not vote in respect of such contract or work or any matter arising thereout, and if he does his vote shall not be counted. It will be noticed that nothing is said in the qualifying proviso about a partner in a firm, and as it is clearly impossible to say that "member of a corporation" in the proviso includes a partner in a firm, the conclusion is inevitable that, in the case of a company adopting Art. 72 of Table A of 1929, a director vacates his office under that article, where he is a partner in a firm which contracts with the company, even though he may have made the disclosure required by s. 149. It will be desirable in the majority of cases to make some emendation to this article when adopting Table A in future.

To return to s. 149 itself, it will be observed that sub-s. (3) confers a right to give a general notice that a director is a member of a specified company or firm and is to be regarded as interested in contracts made after the date of the notice.

*En passant*, one may wonder if this notice is to be in writing, and what exactly is the interpretation of the phrase "after the date of the notice" used in the sub-section, but time and space preclude anything more than a mere mention of the minor matters in this section which appear at the moment to be at large. As stated last week, Lord WRENBURY has suggested that sub-s. (3) modifies the scope of the section, and it will certainly be extremely inconvenient if it does not, but it is at least arguable that it does not modify it to the extent to which it ought to be modified.

A general notice can only be given where the director is a member of a specified company or firm. Suppose he is not such, but suppose he is otherwise interested in a contract? He may be a director of a company where no share qualification is necessary and in which he holds no shares, or he may be a debenture-holder. Assuming for the moment that there are disclosable interests within the section, no general notice can be given in respect of them, and they must be separately and specifically disclosed every time, as also must any other disclosable interests, other than share holding or being a member of a firm, if such there be.

A managing director of a company paid by a fixed salary and not by a percentage, is not disqualified for being a councillor by s. 12 of the Municipal Corporations Act, 1882, which disqualifies persons who have "directly or indirectly . . . any share or interest in any contract . . . ," if his company has entered into contracts with the council (*Lapish* v. *Braithwaite* [1926] A.C. 275). The question of shareholding did not arise in this case, owing to the provisions of the Municipal Corporations Act, 1882, and it is a decision which any argument directed to showing that a non-shareholding director came within s. 149, would have the gravest difficulty in circumnavigating with success.

Is it possible definitely to say that a debenture-holder in a company has not an interest in a contract made by that company within the section? Or is it possible to say that whether he would have or not if sub.-s. (1) stood alone. Sub-section (3) limits the meaning of the word "interest" to the particular kinds of interest which are there referred to?

Last week a counsel of caution was given, but in this case there seems to be no such necessity, and, unless and until decisions show this view to be wrong, it seems to be not unreasonable to act on the assumption that share holding and partnership in a firm are the only disclosable interests within this section, when it is read as a whole. The penalty for non-compliance with the provisions of the section may be as much as £100, but the risks run of being mulcted in this, or any other sum, by adopting the view indicated above, appear to be somewhat small.

(*To be continued.*)

## Contempt of Court.

ATTENTION was recently drawn in Parliament to the fact that a young man had been in prison for over six months for contempt of court. In effect, imprisonment for so long a period would be the equivalent of the punishment for quite a serious criminal offence, after a proper trial by jury, so it was perhaps natural that a question should be asked.

The anomalies of the jurisdiction to commit for contempt have of course long been recognised and, on several occasions, resolutions in the House of Commons have been passed on the desirability of limiting and curtailing it, see, for example, that of 10th March, 1908, "Hansard," 4th series, vol. 185, col. 1433. It is of course arbitrary and unlimited, and some humourist has summed up the practice as follows:—

"To a prisoner said a wise judge,
"The appeal for release is all fudge,
"Till you've begged the court's pardon,
"And the things enjoined are done,
"From Brixton you never shall budge."

In the words of JESSEL, M.R., in *Re Clements* (1877), 46 L.J., Ch. 375, at p. 383: "It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited should be most jealousy and carefully watched and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges, to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject."

It is perhaps unnecessary to add that, notwithstanding the misgivings expressed in Parliament, and by various judges, the power of attachment or committal has remained unchanged, at least since it was laid down in 1765 by WILMOT, C.J., in *Almon's Case* (Wil. 243), in a judgment which has since been followed, but which in fact was never delivered. The one exception to be stated is the power to imprison for disobedience to a decree for the restitution of conjugal rights. This power, formerly exercised by the Lord Chancellor at the instance of judges of the Ecclesiastical Court, appears from the case of *Barlee* v. *Barlee* (1822), 1 Add. 301, to have been not only arbitrary but irrevocable until the contempt was purged by submission, as stated by Sir JOHN NICHOLL to the Suffolk magistrates who commended Mrs. BARLEE's petition for freedom to him, after she had been in prison for over a year. The only alternatives were that the husband should waive his rights or the wife submit—unless possibly, being driven out of her senses by the confinement, she was not in a fit state of mind to obey. The report does not reveal whether or not Mrs. BARLEE preferred the society of the prison warders rather than that of her husband during the rest of her natural life. The jurisdiction was transferred to the Divorce Division by the Matrimonial Causes Act, 1857, and probably never there effectively exercised at all, for the reluctant committal by Lord HANNEN of Mrs. GEORGINA WELDON's husband in 1883 (see *Weldon* v. *Weldon*, 9 P.D. 52) was nullified by the Matrimonial Causes Act, 1884, abolishing the jurisdiction, and substituting the "statutory desertion," on which, until 1923, when wives could petition for adultery alone, so many divorces were founded.

It is relevant here to observe that *Almon's Case*, *supra*, has been doubted, and those who wish to pursue the matter further may study the book on the subject by Sir JOHN C. FOX, late Senior Master in the Chancery Division. Without prejudice to the view which he expounds with so much learning, however, the law must be taken as it is found, and judges, whether rightly or wrongly, assume the power of punishing contempt of court without the aid of a jury, even if the contempt is committed out of court (in the case of contempt committed in the face of the court, Sir JOHN admits the power to punish without a jury, see p. 116).

If the matter is considered as an ordinary problem of justice in a civilised society, it is obvious at once that there must be machinery for enforcing the order of any court. In the case of orders for the payment of money, writs of execution and elegit may achieve the purpose without the imprisonment of the person against whom the order is made. In the case of disobedience to an injunction these remedies are not available. The primary object is to ensure obedience, and, in the case of interference, molestation, nuisance, etc., this may only be possible by physical restraint. Another object, however, may be regarded as legitimate, namely, the subjection of the contemnor's will to that of the court, and yet a third, that is, the public advertisement of the fact that the inconvenience and discomforts which follow disobedience to an order of court are so manifest that obedience is indicated, even to the stubborn, as the lesser evil.

Whether the cases of indefinite imprisonment for contempt like those of the old Chancery prisoner and the cobbler in "Pickwick" were ever founded on fact or not (and one must suppose they were, since DICKENS knew his subject), modern judges are as a rule only too anxious to release their prisoners. In this connexion, however, the problem of contumacy

transcending any length of imprisonment must be faced—or, at least, if not faced, avoided by a more or less ingenious ruse which ensures non-interference with the order made. In the recent case mentioned above, the youth who, in contempt of court, was interfering with his sister and father in Kent, has with his own consent been despatched to live in Ireland, so that, although he remains contumacious at heart, further disobedience on his part will at least be difficult and expensive. The case of Mrs. DAVIES, who was in prison for nearly eighteen months, from December, 1886, to June, 1888, will be found in 21 Q.B.D. 236. She had claimed some houses, and had been found to have no title, but insisted on molesting the owners and tenants, and making attempts to obtain forcible possession. While in prison, she entirely declined to acknowledge that she was wrong, and remained in the mood to repeat her offences. The order made on her release is given in full in the report, and embodied a cleverly worked scheme to give her her liberty with the least possibility of further trouble to the true owners. It is of interest that the two judges differed on the abstract point whether a consistently contumacious person should be imprisoned indefinitely. This problem, it may be added, is not confined to civil cases, for burglars and pickpockets every day leave prison with the firm resolve to continue their temporarily interrupted professions, and the power to deal with them as habitual criminals has only in comparatively recent times been conferred on judges. That contumacious prisoners for contempt were on occasion released without purging it by submission, even in the eighteenth century, is evident from the case of BINGLEY, the publisher of the "North Briton," who, after remaining in prison for more than a year was released "in the same contumacious state he had been put in, with all his sins about him, unanointed and unannealed" as recorded by Sir JOHN FOX in his book, pp. 16 and 114.

Just as the power to imprison is arbitrary, so there appears to be no upper limit to the fine which may be imposed for contempt, either alone or with imprisonment. In *Ex parte Fernandez* (1861), 10 C.B. (N.S.) 3, the appellant was committed for six months and fined £500 for refusing to answer a question as witness, though the refusal was stated to have been advised by counsel. This, of course, was a case of contempt in the face of the court.

Put as an academic problem, the question whether the law as to contempt of court should be reformed can only be answered one way. It places the liberty and fortune of the subject, whether a party to an action or otherwise, in the power of a judge, without trial by jury, uncontrolled by appeal in cases of criminal contempt (see "Oswald," 3rd ed., p. 229), and at least with doubt as to whether the King's pardon can effectively release, see "Chitty, Prerogatives of the Crown," p. 90, though the Privy Council has held otherwise, see *Re Bahama Islands* [1893] A.C. 138. Such an arbitrary power is certainly not in accordance with the spirit of our law. In practice, however, it is exercised so much in the spirit enjoined by Lord JESSEL that, at least in modern times, no substantial injustice can be shown to have resulted from it.

## A Conveyancer's Diary.

**Restrictive Covenants under the new Acts.**

The law with regard to the burden of restrictive covenants has not, so far as regards covenants entered into before 1926, been altered by the L.P.A., 1925, or the L.C.A., 1925, but as to such covenants entered into since 1925 the latter Act makes provisions for registration, and as to the effect of non-registration, which are of the utmost importance.

I propose this week to draw attention to the law as it affects covenants entered into before 1926.

It may be said at the outset that there is no statutory provision requiring or even enabling, charges by way of restrictive covenants entered into before 1926 to be registered. The liability to observe such restrictions depends entirely upon whether or not a purchaser (including, of course, a mortgagee or lessee) has or has not notice of the covenants imposing them. That was the law before 1926 and remains the law now.

It is to be remarked that such restrictive covenants are enforceable in equity only and therefore do not affect a purchaser for value of a legal estate without notice, being in that respect like other equitable rights or interests (*Carter* v. *Williams* (1870), L.R. 9 Eq. 678). The whole question was discussed in the well-known case of *Tulk* v. *Moxhay* (1848), 2 Ph. 774.

It should be observed, however, that the fact of notice does not really constitute the right of the covenantee to enforce the covenant against the assigns of the covenantor. The burden of the covenant is, in equity, passed to such assigns, but as a defence to proceedings to enforce the covenants an assignee of the covenantor may set up that he is the owner of the legal estate without notice of the equitable burden imposed by his predecessor in title.

In this connexion it is worth while quoting at some length what was said by Jessel, M.R., in *London and South Western Rly. Co.* v. *Gomm* (1882), 20 Ch. D. 562, at p. 583: "Where there is a negative covenant expressed or implied as, for instance, not to build so as to obstruct a view or not to use a piece of land otherwise than as a garden, the court interferes on one or other of the above grounds. This is an equitable doctrine, establishing an exception to the rules of common law which did not treat such a covenant as running with the land, and it does not matter whether it proceeds on analogy to a covenant running with the land or on analogy to an easement. The purchaser took the estate subject to the equitable burden, with the qualification that if he acquired the legal estate for value without notice he was freed from the burden. That qualification, however, did not affect the nature of the burden; the notice was required merely to avoid the effect of the legal estate and did not create the right, and if a purchaser took only an equitable estate he took subject to the burden, whether he had notice or not."

Now, whilst Sir George Jessel said that it did not matter whether the equitable doctrine which he adumbrated proceeded on analogy to a covenant running with the land or on analogy to an easement, there is no doubt that the analogy to an easement is more nearly applicable, in this respect at any rate, that a restrictive covenant cannot be enforced against an assignee of the covenantor unless it was entered into for the benefit of some other land of the covenantee. The covenant, as a covenant *in gross*, cannot be enforced except against the original covenantor, and then only as a personal covenant for the breach of which, by an assignee of the land, the covenantor may not be liable at all.

Thus, where on the sale of the whole of the vendor's land the purchaser enters into a covenant restricting the user of the land, the executor of the vendor cannot maintain an action for an injunction against an assign of the purchaser in respect of a breach of the covenant committed after the vendor's death (*Formby* v. *Barker* [1903] 2 Ch. 539).

In the result it may be said that restrictive covenants are enforceable only against the original covenantor or against his assigns with notice thereof if and only if the covenants are imposed for the benefit of land retained by the covenantee.

The law, as above stated, that the purchaser of a legal estate only takes subject to restrictive covenants if he has notice thereof, is stated in s. 2 (5) (*a*) of the L.P.A., 1925, which is, however, merely declaratory.

One of the most interesting and difficult questions arising with regard to the enforcement of restrictive covenants is how far such covenants may be enforced *inter se* by those who have entered into such covenants on the purchase of land forming part of an estate laid out for building under a "building scheme."

The principles applicable in such cases were laid down in *Keates* v. *Lyon* (1869), 4 Ch. 218, where the earlier authorities were reviewed. The leading case on the subject now is *Elliston* v. *Reacher* [1908] 2 Ch. 374. In that case Parker, J., laid down what it was necessary to prove in order that restrictive covenants might be enforced by and against purchasers of lots upon a building estate. In such a case "it must be proved (1) that both the plaintiffs and the defendants derive title under a common vendor, (2) that previously to selling the lands to which the plaintiffs and defendants are respectively entitled, the vendor laid out his estate or a definite portion thereof (including the lands purchased by the plaintiffs and defendants), for sale in lots, subject to restrictions intended to be imposed on all the lots, and which, though varying in details as to particular lots, are consistent and consistent only with some general scheme of development, (3) that these restrictions were intended by the common vendor to be, and were, for the benefit of all the lots intended to be sold, whether or not they were intended to be, and were, for the benefit of other land retained by the vendor, and (4) that both the plaintiffs and defendants or their predecessors in title purchased their lots from the common vendor upon the footing that the restrictions were to enure for the benefit of the other lots included in the general scheme whether or not they were also to enure for the benefit of other lands retained by the vendors."

I propose to pursue this subject next week.

## Landlord and Tenant Notebook.

**Recovery of Possession of Part of Premises.**

Attention might be drawn to the Scottish decision of *McClymont's Trustees* v. *Ross* ((1929), Scots Law Times Reports, p. 424), in which case a somewhat ingenious point under the Rent Restrictions Act was raised.

The material facts in the above case were as follows:—

The premises in question formed part of a two-storeyed building which had three separate entrances from the street. This building comprised under the same roof two shops and a dwelling-house. The two shops were on the ground-floor facing the street and each had a separate entrance. The dwelling-house which took up the rest of the building had also a separate entrance from the street, by a passage between the two shops. As the building was originally constructed there was no internal communication between the dwelling-house and the shops, but it appeared that the building was at one time in the occupation of the grantor of the lease, who for his own convenience had constructed doors so as to give internal access from the dwelling-house to each of the shops.

Part of this building, consisting of the dwelling-house and one of the shops, had been let to the tenant, the appellant, this part being shut off from the other shop by means of a door, which was always kept locked. The agreement to let was verbal, but the rent payable was, as found by the court, one single rent for both the dwelling-house and the shop. The court also held as a fact that the shop part of the premises in question had been let as a shop and the dwelling-house portion as a dwelling-house.

The landlords subsequently claimed possession of the shop and it was held that they were entitled to possession.

Now it has been decided in the English courts that where a dwelling-house and a shop are let under separate lettings, while the house may be within the protection of the Rent Acts the shop will not be so protected (*Phillips* v. *Hallahan* [1925] 1 K.B. 756). Thus Bankes, L.J., said in this case (*ib.*, at p. 759): "The landlord may if he chooses turn the whole of his premises which are within the Act into business premises and so take them out of the Act: *Williams* v. *Perry* [1924] 1 K.B. 936, and if he may do that it seems to me that he may turn part into business premises. If he does so, the Act no longer applies to that part of the premises, for from that moment it ceases to be a dwelling-house and becomes solely business premises."

It is to be noted, however, that in *Phillips* v. *Hallahan* there was a *bonâ fide* separate letting of the house portion and the shop portion of the premises respectively, and the decision of the court might very well have been a different one had the two separate lettings been merely a colourable transaction.

*McClymont's Trustees* v. *Ross*, however, seems to go further than *Phillips* v. *Hallahan*, since in the above case it was held that the shop was not within the Acts, notwithstanding the fact that there was a single tenancy and a single rent in respect of both the shop and the dwelling-house.

One would have imagined that in such a case the shop would also have been protected by reason of s. 12 (2) (ii) of the Act of 1920, which provides that "the application of the Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade or professional purposes."

The court, however, held that this provision did not apply in the circumstances.

The court held that the test to be applied in such cases was whether the whole subjects were let as a separate dwelling (see s. 12 (2) of the Act of 1920), but on such conditions that the use of a part thereof for business purposes was permissible or whether on the other hand the subjects were let, although under a single tenancy, so far as regards the dwelling-house accommodation as a separate dwelling-house, and so far as regards the shop portion of the premises as a shop. In the former case the whole of the premises would be controlled, but in the latter the shop portion of the premises would not be protected.

These questions are of course questions of fact, but the court held that the case came within the second of the above tests and that the shop accordingly was not protected. As Lord Blackburn said: "The purpose of the Act was not to be frustrated by the fact that the occupier of the dwelling-house used part of the premises of the dwelling-house as a shop . . . But nowhere does it appear that the Act applies to the occupancy of a shop which is not part of the premises of a dwelling-house, but is in itself a self-contained subject, structurally and capable of separate occupation."

It remains to be seen, however, whether this principle will be followed by our courts. The point in question does not appear to have ever been raised before except in the Scotch courts.

## Our County Court Letter.

### ADDED PERIL AND WORKMEN'S COMPENSATION.

(*Continued from* 73 Sol. J. 761.)

IV.

Four recent judgments show the trend of decisions on the above subject. In *Wood* v. *Scarborough Tramways Company Limited*, at Scarborough County Court, the applicant's deceased husband had been a tram driver. After demonstrating the working of the controls to another man, the deceased had passed in front of the car and had touched the handle, whereupon there was a flash, and the tram jumped forward and crushed him. The respondents contended that the accident did not arise out of and in the course of employment, and was the result of the deceased's own act, which was contrary to the regulations. His Honour Judge Beazley held that the jumping forward of the tram was not caused by the demonstration to the other man, but had occurred when the deceased was crossing in front of the tram to prepare it for starting on his employers' business. The proceeding

contravened a regulation of the respondents, but the deceased had so acted for the purpose of and in connexion with his employers' business. An award was therefore made in favour of the applicant and her four children of £479 5s. 8d. with costs on Scale C.

In *Goodyear* v. *Pullin*, at Ipswich County Court, the applicant had been a lorry driver, but (on work becoming slack) he had made himself generally useful in the respondent's yard. The applicant's leg had then been broken, through being fallen on by a 19-cwt. wheel, which he was trundling—his case being that he was moving it out of the way of two men working on a lorry. The respondent had told him not to worry, as the accident had happened during his work, but ten weeks later it transpired that the policy had lapsed before the accident. The suggestion was then made that the applicant was not assisting in moving the wheel, that he had no need to be near, and that in moving it he had acted contrary to orders. The respondent denied having said that the accident was in course of work, but had acquiesced in a formal claim by the applicant, although he had been playing about with the wheel. Corroborative evidence was given that the applicant only came on the scene after the removal of the wheel, which should not have been moved by one man unaided. His Honour Judge Chetwynd Leech held that the applicant had only touched the wheel in order to demonstrate his own skill, and judgment was therefore given for the respondent, who did not ask for costs.

In *Walton* v. *Harper and Green*, at Nottingham County Court, the applicant was a joiner's apprentice, aged seventeen, and had been assisting a foreman at a woodworking machine. On the foreman leaving the shop, the applicant pushed a piece of wood into the saw, and walked to the back to take hold of the wood. The latter had a warp or irregularity, and kicked back, pulling the applicant's hand into the circular saw, which was doing a thousand revolutions a minute. Two of the applicant's fingers had been amputated, and—although he had been taken back by the respondents at 16s. a week, his old wages—he was a one-handed man from an industrial point of view. The respondents' case was that the applicant had been forbidden to touch any machines, including the circular saw, and His Honour Judge Hildyard, K.C., dismissed the application, without costs.

In *Wrapson* v. *Newing*, at Brighton County Court, the applicant's husband had started a Ford engine by jacking up the back wheel, with the result that the lorry moved forward and inflicted injuries causing death. The respondent denied that the accident arose out of and in the course of the deceased's employment, and His Honour Judge Sir William Cann pointed out that there was no evidence to show what induced the deceased to adopt such a hazardous method. There was evidence, however, that earlier in the day the deceased had started the engine in the ordinary way with the starting handle, and the inference was that—on a difficulty arising—the dangerous method had been adopted to avoid delay and loss of time. The accident therefore arose out of and in the course of employment, and the applicant was entitled to an award.

# Practice Notes.

## NEW RULES OF THE SUPREME COURT.

The Rules of the Supreme Court (No. 3), 1929, are now obtainable at the usual sources and appear in full elsewhere in this issue. Though comparatively short, the changes effected by these Rules are important, and practitioners will be well advised to make careful note of them, as unfortunately they appear too late for inclusion in the yearly practice publications for 1930, which are already on sale. The first two of the new Rules do not come into operation until the 1st April, 1930, and are obviously the outcome of the Report of the Poor Persons (Divorce Jurisdiction) Committee, which was published a few months ago. Rule 1 extends the jurisdiction in interlocutory proceedings in poor persons divorce cases as provided in Ord. XXXVA to fifteen additional district registries. Rule 2 provides an additional eight assize towns at which divorce business may be taken (Ord. XXXVIA).

Rule 3, which, it should be noted, comes into operation on the 1st January, 1930, effects important amendments in the order relating to "costs," by the omission from r. 1 of Ord. LXV of the proviso relating to jury actions, by the revocation of r. 2 of that order, and by the addition of certain words to r. 3 thereof. The general effect of these amendments is that in all proceedings (other than certain matters peculiar to the Chancery Division) there shall be one universal rule only, namely: "Costs to be in the discretion of the court." There are some, no doubt, who may feel that the proviso in question ought not to have been tampered with, holding that the province of a jury is to relieve the judge of certain of the functions he would exercise if sitting alone and that, in such circumstances, he should not have a discretion which might be used to neutralise the effect of a finding with which he did not agree. On the other hand, most of the legal profession will welcome this move towards uniformity feeling that, so long as our judiciary maintains its present standard of fairness and efficiency, special provision in the case of jury actions is confusing, unnecessary and illogical. A further, and by no means unwelcome, effect of this change may be the reduction to more reasonable proportions of the vast mass of notes (approximately seventy pages) at present required in the practice annuals for the explanation of these Rules.

## THE DUTIES OF A STOCKMAN.

In the recent case of *Batchelor* v. *Williams*, at Southam Petty Sessions, the claim was for £2 14s. as wages underpaid, the plaintiffs' case being that he was entitled to 36s. a week as a stockman, instead of the 33s. a week paid by the defendant. The case had been adjourned for enquiries as to what the work of a stockman consisted of, but the Warwickshire Agricultural Wages Board had replied that there was no actual definition. The Bench considered, however, that the plaintiff had been overworked, as he had put in fifty-three hours per week instead of forty-eight, although there was a conflict of evidence as to whether the plaintiff had worked three hours or only one and three-quarters hours on Sundays. It appeared, however, that there were five persons to milk about two dozen cows, and that the plaintiff's only other Sunday work was to take the cows back to the field—a distance of about 200 yards. The conclusion was that the plaintiff had worked five hours a week overtime, and was entitled to judgment for 1s. 1d. a week for eighteen weeks, viz., 19s. 6d. and 9s. 6d. costs. Compare "Overtime Payments to Farm Workers," in our issues of the 5th and 26th October, 1929, 73 Sol. J. 638 and 707.

## THE SCOPE OF THE SILICOSIS REGULATIONS.

(*Continued from* 73 Sol. J. 597)—II.

The Court of Appeal have reversed the judgment in *Doncaster* v. *R. Sudlow and Sons Limited*. Lord Hanworth, M.R., stated that the evidence showed that jet and Rockingham was a kind of pottery composed of clays, but there was nothing to show that it was within the general term of earthenware. The Workmen's Compensation Act, 1925, s. 47, gave power by scheme to apply the Act to sufferers from silicosis, but the fact of the section dealing with specified processes seemed to connote that only special classes of persons were brought within the Act. The rule of law was that the court had to give an interpretation understood by those in the pottery trade, and no words in the scheme covered the process in which the respondent had been engaged. Lords Justices Slesser and Romer concurred in allowing the appeal, with costs. It was pointed out in argument that, if the appellants were correct, many people exposed to silica dust had no remedy, but (as stated by the Master of the Rolls) the above scheme can be amended by a new and wider scheme under s. 47, *supra*.

# POINTS IN PRACTICE.

**Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

### Poor Persons' Divorce in New Zealand.

*Q.* 1806. A client of ours has consulted us on the question as to whether or not she would be entitled to the advantages of the Poor Persons' Divorce Procedure. The circumstances are that her husband, who was in the Royal Navy, took his discharge whilst his ship was in New Zealand waters in 1928. Since he left the navy he apparently went through a form of marriage with a woman in New Zealand, and was for some time living with her as his wife. Since the second marriage the second wife has informed our client that she purposely omitted to sign the register, and suggests that this being so, the second marriage has no effect, and therefore that no question of bigamy arises. How far this contention is justified we need not enquire. It is sufficient for our client's purpose that there are grounds for divorce. Since he has been in New Zealand our client's husband has sent her at various times sums totalling £48 up to date. She has three children all under age, and is herself chargeable to the guardians. Our client does not know her husband's address, but she believes he has no intention of returning to England. Would you kindly give us the benefit of your opinion on the following points :—

(1) Is there any means by which proceedings can be instituted against the husband in this country, he being absent in New Zealand, and, if so, can the evidence of misconduct be obtained on commission ?

(2) If proceedings for divorce were instituted in New Zealand could the wife's evidence be taken on commission in this country and used in the New Zealand courts ?

(3) Is there a poor persons procedure in New Zealand which would be available to a person such as the wife ?

*A.* If the wife is correct in her belief (that the husband has no intention of returning to England) then the domicile of the parties is New Zealand, and proceedings must be taken there. The omission of the second wife to sign the register may be evidence of her lack of consent, but she would find difficulty in establishing this, if prosecuted for bigamy. The fact of the bigamous marriage having been contracted is not in itself evidence of adultery, which must be proved independently. In answer to the specific questions :—

(1) Proceedings can only be instituted in this country if there is evidence that the husband means to return, and has not given up his domicile here. The ordinary poor persons procedure is available, and the evidence can be taken on commission.

(2) Yes.

(3) The Law Society have entered into reciprocal arrangements with most of the Dominions and Colonies, and application for particulars should be made to the Secretary, at Chancery-lane.

The sums totalling £48 are no evidence that the husband means to return, as it may be that he means to send for his wife and children, as the second marriage is not a success.

### Settlement of Pure Personalty—Number of Trustees permitted.

*Q.* 1807. By a deed of settlement (dated 1919) three trustees were appointed to hold certain funds consisting of pure personalty upon trusts therein mentioned. By a deed of retirement and appointment of new trustees (dated 1929) one of the original trustees retired and the settlor (in whom was vested the power of appointment) appointed three new trustees to act with the two continuing trustees. As far as we can see there is no objection under ss. 34 and 35 of the T.A., 1925, to there being five trustees of a settlement of pure personalty ; but we are in some doubt as to whether s. 36 (6) applies to this case, which, it will be seen, is *not* a case of appointment of additional trustees where no vacancy has occurred (the case apparently dealt with by s. 36 (6)). We should like to know :—

(*a*) Whether the appointment referred to was in accordance with the provisions of the T.A., 1925, and

(*b*) if it was not in accordance with those provisions, what the present position is—i.e., whether the property is strictly vested in the first four named trustees.

*A.* (*a*) Yes.

(*b*) *Cadit quaestio.* There are but two provisions in the T.A., 1925, restrictive of the numbers of trustees of a settlement of pure personalty, viz., s. 36 (6) (addition when no vacancy) and s. 37 (1) (*b*) (separate trustees of part of funds). Neither case apply to this case. The addition in the case submitted was made under s. 37 (1) (*a*). The restrictions referred to in this sub-section are those of s. 34 (not applicable to the case of a settlement of pure personalty) and s. 36 (6).

### Will—Conditional Revocation—Conditional Wills.

*Q.* 1808. A.B. is a wealthy elderly married man without children, and he is desirous of leaving all his property to his wife, provided she survives him, and his wife—who has also ample means—is desirous of leaving the same to her husband. On the death of the survivor the combined estates are to be divided amongst distant relatives who will benefit very materially under the will of such survivor. The testator is anxious so to frame his will that if his wife survives him the distant relatives will not be aware of the ultimate disposition of the estate. Can his objects be achieved in the following way :—

(1) For the testator to execute a will without reference to his wife and leaving his property to distant relatives ?

(2) Immediately subsequently executing a will revoking former wills and leaving the property to his wife on the lines of the enclosed draft ?

The effect of the same would appear to be a conditional revocation of a previous will, and I am unable to find any authority dealing with this point.

*A.* We think, though we have failed to find an authority on the point, that the proposed procedure is satisfactory. It appears to us to be needlessly complicated, and we therefore propose as an alternative that the husband should make two wills : the one (to be signed before the other) in favour of the wife, to revoke all former wills and to be expressed to be made conditional upon the survival of the wife and the other in favour of the distant relatives, to revoke all former wills (except the conditional will above referred to), and to be conditional upon the wife predeceasing the testator. There is ample authority to support a conditional will (*Parsons* v. *Lanoe*, 1 Ves. 190 ; *Lindsay* v. *Lindsay*, L.R. 2 P. & W. 450). It is suggested that the two wills might conveniently commence as follows. The former, " I, A.B., of, etc., hereby revoke all former wills and testamentary dispositions heretofore at any time made by me and in the event and in the event only of my wife X.B. surviving me declare this to be my last will and testament." The latter, " I, A.B., of, etc., hereby revoke all former wills and testamentary dispositions heretofore at any time made by me (except my will passing even date herewith

but signed before this my will and made conditional upon my wife X.B. surviving me) and in the event and in the event only of my said wife X.B. predeceasing me declare this to be my last will and testament." Upon the proof of either will proof of the happening of the appropriate event will be required.

**Mortgage**—Vacating Receipt—Stamp Duty.

*Q.* 1809. Some years ago A mortgaged his freehold property Greenacre, to B. In July last A repaid to B the whole principal and interest, but no statutory receipt was executed. In September last B became bankrupt. A has now contracted to sell the property to C. C refuses to complete before a statutory receipt is endorsed on the mortgage and stamped. The Official Receiver in the bankruptcy of B will not execute any receipt because the debt was discharged direct to B before the bankruptcy. B is, however, willing to execute the receipt. It is feared there will be some difficulty about stamping the receipt without incurring a penalty, because it will have to be stated thereon that B acknowledges to have received the money on a certain date before the bankruptcy, i.e., well over thirty days before the deed is presented for stamping. If there is any substance in this apprehension, what is the best course to take ?

*A.* We express the opinion that the apprehension is without substance. The receipt should make it clear that the date of the execution thereof is not the same as the date of the receipt of the money.

If any doubt is felt as to the accuracy of our view, we suggest an express "reconveyance," by way of security of the term, reciting the payment of the money prior to the bankruptcy and that no statutory receipt or "reconveyance" was executed.

**Rates on Fishing Rights.**

*Q.* 1810. By an agreement in writing there was granted a right of fishing in a trout stream, from the 25th March, 1929, "for one year with the option of continuing for a further two or four years." The tenant agreed to pay the rent and also to "pay all rates (if any) for the time being payable in respect of the premises hereby demised." "The premises" refer, no doubt, to the right of fishing, with liberty for the tenant to pass along the banks of the stream. The tenant paid the rates for half a year ended on the 30th September, 1929, and as the stream was a trout stream he will not fish again before next April. He has now been served with a demand note for rates for the "financial half year ending on the 31st day of March 1930." Is it possible to escape liability for this demand ? Clearly under the agreement the tenant must pay all the rates that are payable, but the question is whether they are payable during a period when the stream cannot be fished. Rates are not payable on a house during a period when it is void, and if the tenant is deriving no benefit whatever under his fishing agreement and never even visits the stream during the six months to the 31st March, is he liable to pay the rates during that period ? If any rates are payable it is he that must pay them under the agreement. Will you be so good as to give your opinion, with the authorities if possible ? It should be added that the tenant does not propose to exercise the option to continue the tenancy after next March.

*A.* It is presumed the agreement is for general rights of fishing, and that these have been separately assessed. Although there is no authority on the point, the rates appear to be payable for the current half year, if for no other reason, on the ground that it is open time for other fresh water fish and the occupier of the fishing rights may lawfully fish for them. If the agreement is not under seal it is suggested that the tenant should give notice to the landlord and the rating authority that he ceased to exercise the right on the 31st September. According to the decision in *Swayne* v. *Howells* [1927] 1 K.B. 385, the tenant is not liable directly to the rating authority. Probably as against the landlord the rating authority will enter the fishing rights as void.

# Correspondence.

## Section 149, Companies Act, 1929.

Sir,—As a ludicrous side-issue arising from drafting, can a director (even if granted formal leave of absence) safely omit to attend any board meeting for fear lest some such contract, as is referred to in the section, should be "taken into consideration.

Sub-section (2) prescribes that the declaration of "interest" *shall* be made at the meeting at which the "question of entering into the contract is *first* taken into consideration." The section does not go on to give any opportunity to any absent director to make good at the first subsequent meeting at which he is present. One time only is prescribed and that would have passed. (The reference to a "next meeting" relates only to the case where a director has subsequently acquired an interest.) An absenting director could not safely rely on the agenda not having referred to a contract—some contract might well be an eleventh hour matter, and although nothing might have been settled, it would have been first taken "into consideration." Therefore, in effect, an absent director would ever be running the risk of £100 fine.

His only safeguard would be to rely on sub-s. (3), which is very wide. "A member of a company or firm" must include shareholders and partners active or sleeping, and as such (the notice must go on to state) he "is to be regarded as interested in any contract which may be made with that company or firm." This must include trust holdings, for it is the trustee who is a member, not the beneficiary. And yet sub-s. (1) would hit a beneficiary-director, for an indirect interest is included there—but the protection of sub-s. (3) would be of no use as he would not be "a member.")

A director's only safe course would be to give a list of every holding he has. He might have shares in a gas company or electric light company, or be a partner in a firm of coal merchants supplying gas, light or coal to his company. Although these matters are usually arranged "in the office," it is always possible for some reference to be made to them at the board, and then all the directors would have at once to search their memories, and woe to the absentee.

The prosecutor need not have an interest in the company, and the fines go (generally) to the Exchequer.

What a chance here for our hungry Chancellor of the Exchequer to make the wealthy exploiter of workers pay; what millions may he not judicially sweep in "now that *crimes* are so many and saints so few." It is odd that no legislating reformer is happy unless he can create a new crime.

London, W.C.1. W. E. Tyer.
6th December.

# Notes of Cases.

## Court of Appeal.

**Silver *v.* Ocean Steamship Co.**

Scrutton, Greer and Slesser, L.JJ. 11th November.

Shipping—Carriage of Goods by Sea—Bill of Lading—Receipt of Goods in Apparent Good Order and Condition—Estoppel—Carriage of Goods by Sea Act, 1924 (14 & 15 Geo. 5, c. 22), Sched., Art. III, rr. 3, 4, Art. IV, r. 2.

Appeal from a judgment of Roche, J.

The plaintiffs claimed as owners and indorsees of a bill of lading in respect of some 21,334 cases of frozen eggs delivered to the defendants' ship for carriage from Shanghai to London and delivery to shipper's order or assigns. They alleged that the goods were delivered in a damaged condition in London, and that the defendants were liable for a breach of the contract of carriage evidenced by the bill of lading. Alternatively,

they alleged that the damage was caused by the negligence of the defendants. The defendants pleaded (*inter alia*) that the damage was due to the inherent defects or quality or vice of the goods, or was due to insufficiency of packing and that they were exempted from liability, and, while denying liability, they paid into court £350. The plaintiffs pleaded in reply that the defendants, by their bill of lading, having acknowledged the receipt of the goods in apparent good order and condition on board their ship, were estopped from denying that the goods were shipped in apparent good order and condition, and they alleged that the tins containing the frozen eggs were square and had sharp corners, and that they were not covered with fibre or cloth or cardboard, and therefore that the defendants having accepted the goods without protest and having given a clean bill of lading in respect of such goods were not entitled to rely on any omissions of the shippers or on any inherent defect, quality or vice of the goods nor on insufficiency of packing within the meaning of Art. IV, r. 2, of the schedule to the Carriage of Goods by Sea Act, 1924. Damage was, in fact, occasioned to the goods in question at every stage of the journey from the shipper's store in Shanghai—both before loading, during loading, during the voyage, during discharge and after discharge—to London. Roche, J., held that the amount paid into court by the defendants was sufficient to cover the damage caused by the method of discharging, which was negligence on the part of the defendants' servants, and he held that this was the only damage for which the defendants were liable. By r. 4 of Art. III of the schedule to the Carriage of Goods Act, 1924: " . . . a bill of lading shall be *primâ facie* evidence of the receipt by the carrier of the goods as therein described." The plaintiffs appealed.

THE COURT (Scrutton, Greer and Slesser, L.JJ.), allowed the appeal, holding that the defendants having issued a bill of lading acknowledging the receipt of the goods in apparent good order and condition, were estopped from relying on any defect, damage, vice or insufficiency of packing which could have been discovered by reasonable examination. In addition to being liable for damage caused by negligence in discharging the goods, the defendants were also liable for damage which had in fact occurred before the goods were received for shipment under the bill of lading, and was of such a character as to be apparent on a reasonable examination. The defendants were precluded by estoppel from alleging that such damage was not caused while the goods were in their custody. Nor could they rely on the exception of insufficiency of packing within Art. IV, r. 2 (*n*) of the schedule to the Carriage of Goods by Sea Act, 1924, as that exception only applied to damage arising during the carriage of the goods. The amount of the damages which the plaintiffs were entitled to recover must therefore be proportionately increased. Appeal allowed.

COUNSEL: *Clement Davies*, K.C., and *G. St. C. Pilcher*; *S. Lowry Porter*, K.C., and *James Dickinson*.

SOLICITORS: *William A. Crump & Son*; *Stokes & Stokes*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

### De Jong, *In re*: Public Trustee *v.* Goldsmid.

Eve, J. 27th November.

WILL—CHARITABLE GIFT—LEGACY TO HOSPITAL—THE CHELSEA HOSPITAL—THE ROYAL HOSPITAL AT CHELSEA—"THE."

This was an originating summons issued to determine whether a legacy bequeathed to the Chelsea Hospital was payable to the Chelsea Hospital for Women or to the Kensington, Fulham and Chelsea General Hospital, or to the Royal Hospital at Chelsea. The testatrix, Miss de Jong, of Hoylake, in the County of Chester, by her will dated 9th November, 1918, declared that the Public Trustee should in the events which happened stand possessed of her residuary estate upon trust to divide the same into 100 equal parts and to pay and distribute the same (*inter alia*) as to twenty-two equal parts for "the Chelsea Hospital." The Kensington, Fulham and Chelsea General Hospital had in the course of the hearing been ruled out because the word "Chelsea" did not appear as part of the name until some years after the date of the will.

EVE, J., in a reserved judgment, said that if the definite article "the" had been omitted from the will he would have had no difficulty in deciding that the Royal Hospital at Chelsea was intended to benefit. Great reliance was placed by counsel on behalf of the other claimants on the presence of the article, but it was not immaterial to observe that in the copy of the will before him in three other legacies in which the article was used the word was spelt with a capital T, whereas in the case of the Chelsea Hospital that was not so. Each of the two institutions was occasionally referred to as the Chelsea Hospital, but in the contest of nomenclature the Royal Hospital had the ascendancy. The introduction of the article "the" in the name was not sufficient to divert the benefaction from the Royal Hospital at Chelsea to whom he declared it to be payable. The costs would come out of the residue.

COUNSEL: *Danckwerts, Stafford Crossman, Sir T. Inskip*, K.C., and *C. D. Myles*; *C. R. R. Romer*.

SOLICITORS: *Patersons, Snow & Co.*, for *J. C. Wilson*, Liverpool; *The Treasury Solicitor*; *Kinsey, Ade & Hocking*; *Clifford-Turner, Hopton & Lawrence*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### J. C. Forder & Son, Ltd. *v.* Hartington.

Finlay, J. 15th November.

CONTRACT—PURCHASE OF GROCERIES—POSITION OF SERVANT—CARETAKER—PLEDGING MASTER'S CREDIT.

In this action J. C. Forder & Son, Ltd., grocers, claimed £189 10s. 2d. from Lord Hartington for goods alleged to have been supplied to him. The plaintiffs alleged that one of their agents saw at 85 Eaton-square, a house being prepared for Lord Hartington, a man called Jameson, who represented himself as being Lord Hardington's steward. Jameson said that he would get his master's permission to deal with the plaintiffs. The plaintiffs subsequently received a number of orders between November, 1928, and June, 1929, from Jameson purporting to be for Lord Hartington; a large part of the orders were for drink. When the account rendered was not met, the plaintiffs communicated with Lord Hartington, who denied all knowledge of the transactions. Jameson was employed as caretaker at 85, Eaton-square while Lord Hartington was living at 2, Upper Belgrave-street, and later at the latter address when Lord Hartington moved to Eaton-square. All the goods were delivered on Jameson's orders at whichever of the houses was empty, and Lord Hartington's defence was that those goods were supplied without his knowledge, consent or authority

FINLAY, J., said that he had no doubt that the defendant was entitled to succeed. There was no dispute that Jameson had no actual authority to pledge Lord Hartington's credit, and there was no ground for suggesting that he was held out as having such authority. He was employed as a caretaker, and nothing else. Judgment for the defendant.

COUNSEL: *Tristram Beresford*, for the plaintiffs; *T. J O'Connor*, K.C., and *C. P Harvey*, for the defendant.

SOLICITORS: *T. J. Robinson & Son*; *Crump, Sprott & Co*, for *Currey & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

A UNIVERSAL APPEAL.

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

# HERTFORDSHIRE LAW SOCIETY.

## COMMEMORATING A LEGAL CENTENARY.

"To celebrate a centenary upon the Roll of Solicitors, of George Debenham, 1829-1883, and E. P. Debenham, 1881-1929," the President, Vice-President and Committee of the Hertfordshire Law Society sent out invitations to the solicitors of Hertfordshire, members and past members of the staff of Messrs. Thompson and Debenhams, and a few personal friends, to take dinner at the Midland Grand Hotel, St. Pancras, recently, as the guests of Mr. E. P. Debenham.

Sir CHARLES LONGMORE (President of the Hertfordshire Law Society) was entrusted with the toast of the evening—"Our Host." He said he considered it a great privilege to ask those present to drink to the health of their kind host. Mr. Debenham stood in an honoured position that night, because he was able to look back upon his own work and that of his late brother and his father with great pride, as having attained an honourable position in their profession in the county. (Applause.)

They had not, during all those hundred years, been engaged in the County of Hertford, because Mr. Debenham's father opened an office there in 1850; but what they had met, in the main, to celebrate, was the great portion of public service given in the hundred years, between 1829 and 1929, by Mr. George Debenham, Mr. A. H. Debenham and Mr. E. P. Debenham. While they were surveying those hundred years, it would be a little interesting to take stock and to ascertain whether the prospects of the legal profession were as good now as they were a hundred years ago. He did not know that the position of the profession had been very much improved by the change of name from attorney-at-law to solicitor. He thought there was a great deal to be said for the old form; but a change was, in the wisdom of their predecessors, brought about. What did they do in those days? In those days, everybody who had committed any sort of crime in a highly-respectable manner, was brought up either at Assizes or Quarter Sessions. There were no Petty Sessions Courts in those days and, depend upon it, their predecessors

REAPED A GOOD HARVEST

in defending those men at Quarter Sessions—not with any great success, because he had read in old local papers that on one occasion five gentlemen were condemned by the judges at Assizes to hang! Before a man was hanged, his friends came together and tried to find money for a solicitor for the defence; and it was the same at Quarter Sessions.

Sir Charles then referred to a case in which a lady was charged with stealing bacon and her solicitor put up the defence that the condition of her health at the time was such that it was an irresistible temptation to her to take the bacon, and therefore she could not be convicted. (Laughter.) They had lost all that, and we had lost the Civil Courts. Anybody who had an action in the old days, used to fight his case out, and in a reasonable manner, at the Assizes, where proper fees were paid and taxation took place on the High Court scale. Now, if a man went into litigation to-day, he had to bring his bill before a harsh Registrar like Mr. William Onslow Times, or himself, and have it cut down to some miserable scale of which we were almost afraid—(Mr. Matthew Arnold: 'Shame')—We might say ashamed, perhaps. (Laughter.) But then, in the old days, they had their good times in elections. They were men of high honour in those days. The members of his own family used to think it a fit thing to be Returning Officer for the county and borough, and to be agent for one of the parties as well. (Laughter.) He was sure Mr. Debenham's predecessors did the same. How on earth they kept out of prison, he did not know. (Laughter.) But there was this to be said that whilst the City of St. Albans was disfranchised, Hertford never was.

Those who were learned in those things and understood the conveyancing laws, looked back to the old days when it took two deeds to convey a small piece of land. The number of 6s. 8d.'s and 3s. 6d.'s that their ancestors earned were almost enough to

MAKE ONE'S MOUTH WATER.

(Laughter.) Then again, they had to deal with the manors, which brought further grist to their mill.

To-day, motor cars were a great asset to the profession. As one who appeared sometimes at the Court of Assize and sometimes at the County Court, he wondered why it was their witnesses always said, when they had got a car that had been guaranteed to go 60 miles an hour, that the pace at which they were proceeding at the time of the accident was about 15 miles an hour. (Laughter.) That might be something which they should consider. Some of his friends would probably see that there was something to be made out of that.

He did not know whether they had anything to hope for from the new Rating and Valuation and Local Government Acts. There was one hope they had got that their ancestors never had anything to touch, and that was their 33⅓ per cent. (Laughter.) He said "Stick to your scale and 33⅓ per cent. and you won't starve after all." (Laughter.)

He had to ask them to do honour to this firm that he had known in high repute all his life—Messrs. Thompson & Debenhams. At one time they did his firm the great honour of being their London agents. He had known every member of the firm, who were settled for 103 years in Salter's Hall-court. Amongst those were Mr. George Debenham, a solicitor of very high honour and of very great repute, and he was glad to be able to say he could remember him even to this day as one of the founders of this Society, who encouraged them to start it, and its success was very much due to his interest." (Applause.) He also recalled that Lord Field, a judge of the High Court and one of the Peers to try cases in the House of Lords, was once a member of the firm and one of his grandfather's greatest friends. It was interesting to remember also that his friend, Mr. W. O. Times's firm had produced Lord Brampton. (Applause.) At all events, Mr. Debenham's firm produced, amongst others, Lord Field, who was responsible for setting out the whole of the Common Law Procedure in the Act of 1875. He was a very great man and a very great judge.

Then there was his very old friend, Mr. A. H. Debenham,

A GOOD, HONEST, STRAIGHT CHAP,

who would always stick up for one if one was in a corner—(Applause)—and there was their kind host, Mr. E. P. Debenham, solicitor to the Corporation of St. Albans, and still, he was glad to say, solicitor to the New River Company, who was entertaining them so splendidly. (Hear, hear.) He was very glad indeed to see Mr. Debenham's younger son, Mr. Gilbert Debenham, who bore an old and honoured name, with them on that occasion. (Applause.)

Sir Charles brought his interesting speech to a conclusion by saying that all present felt most grateful to Mr. E. P. Debenham for his kindness to them that evening. They desired to express their extreme respect for him and his family and could only hope that in another hundred years' time another member of the house of Debenham would be entertaining his friends in the same kind manner. (Applause.)

RETROSPECTION.

Mr. E. P. DEBENHAM, who was received with applause upon rising to respond to the toast, expressed his thanks to Sir Charles Longmore for having so kindly proposed it and to those present for the cordiality with which they had received it. He desired to thank them all for attending to celebrate the centenary of his father and himself on the roll of solicitors. It was a somewhat unique occasion and he thought that, instead of celebrating it as a family matter with his own staff, he would ask the members of the Hertfordshire Law Society and some of his closest friends, because he felt that his late father and brother would have wished the Hertfordshire solicitors, amongst whom they had spent so many years of their lives, to come and help him celebrate it.

Such an occasion was one of retrospection and he felt, therefore, that he would be excused if he dilated a little on his father and his dear brother, both of whom would have looked forward to a celebration of that kind. His father (Mr. George Debenham) was articled to a solicitor in Suffolk, in 1823, and, on the completion of his term, went to London, and on his certificate of admission his address was given as Cheapside. Nowadays, that would be rather a vague address, but no doubt in those days it was very easily to be found. In 1840, his father, with Mr. Field, were taken by Mr. Edward Thompson into partnership under the style of Thompson, Field and Debenham. Sir Charles Longmore had referred to the career of Lord Field, and he was very proud of the fact that a solicitor once connected with their firm should have gone to the Bar and be raised to be a judge of the High Court, and end his career as a Lord of Appeal. It seemed what had been done might be done again. In 1850, his father came to St. Albans to live, and he believed that his youngest brother, Alfred, was at

that time a partner with Mr. Thomas Kinder, a brewer, whose brewery was subsequently taken over by Messrs. Adey & White and, he thought, had something to do with his father coming to St. Albans. Shortly afterwards, he opened an office in St. Albans with Mr. Newport, whose son was present with them that evening, as managing clerk, he being transferred from the London office. Mr. Newport, he thought, served from 1850 to 1890 as managing clerk of the St. Albans branch. Shortly afterwards, said Mr. Debenham, his father was elected a member of St. Albans Town Council and in 1857—rather quick work, perhaps—he was elected Mayor.

In May, 1858, as Mayor, he opened the branch line of the London & North-western Railway from Watford to St. Albans. That, perhaps, marked an era in the history of St. Albans. There was no doubt that the facilities of travel by rail were far better now than in those days. When his father first settled in St. Albans, if he wanted to go to London, he had to drive to Watford, and then when the main line of the Great Northern Railway was opened, he was able to cut down the road journey by 3 miles by travelling to Hatfield. His father, he believed, was one of the first season ticket holders on the London and North-western line. Having served the office of Mayor for a year, he was pressed to take it on for a second year, which he did. For some years his father was unable, owing to business engagements, to continue to serve on the council, but in 1871 he was again elected, continuing a member until his death. He was one of the first members of the St. Albans School Board, established in 1878. It would, perhaps, be of interest to know that one of the last things he was able to perform was to attend the quarterly meeting of the Council in February, 1883. He had to be taken home, suffering from an attack of apoplexy, from which he did not recover. As Sir Charles Longmore had said, his father interested himself in the establishment of the Hertfordshire Law Society, the preliminary meeting in connexion with which was held only a few days before his death.

With regard to his son, Gilbert, he hoped soon to welcome him as a duly-qualified Hertfordshire solicitor. (Hear, hear.) He had to thank Sir Charles Longmore on his own behalf and on behalf of his family for the kind references he had made to them. They had tried to do their best and to follow the examples that had been set by those who had gone before, and he was sure he could rely upon his son to carry on and keep the flag flying as his father and his brother before him had done. (Hear, hear.)

It was a memorable day in his life and he was extremely glad he had lived to see it. (Applause.)

### In Merry Mood.

Lieut.-Col. Lovel Smeathman, Vice-President of the Hertfordshire Law Society, in submitting the toast of "The Law Society," said he would say more about that Society were it not for the fact that Mr. Cook was sitting on his right. He came prepared with all sorts of rude remarks, the principal of which was that The Law Society of England was the worst trade union in Europe—with no trunk telephone. (Laughter.) He did not suggest that the members of the council of that great institution had anything to do with that fact, but he was looking to the members of the council to see what they could do for them. Quite recently, as Sir Charles Longmore had said, they succeeded in persuading the Lord Chancellor to grant an increase of 33⅓ per cent. Incidentally, that occurred exactly at the moment when Sir Benjamin Cherry (a relative of Mr. A. G. L. Gamlen) was managing a great Act of Parliament which was said to be the dawn of cheaper conveyancing. What was the result? The obvious result was that all the "scallywags" of the profession, of which he was one, and possibly Sir Dennis Herbert was another, said at once "We shall be pleased to do the work without adding the 33⅓ per cent." Did they call that a proper way to work their trade union? (Laughter.) Supposing they had been miners, what would have happened? (Hear, hear.) They would have been bombarded with stacks of Halsbury's "Laws of England" and would probably have found themselves in a position to require police protection before they got to their offices. (Laughter.) Be that as it may, The Law Society of England had done a great deal for them. Since he had been Vice-President of the Hertfordshire Law Society for rather a prolonged period, owing to the fact that his father-in-law wished to be President in the year when he (Colonel Smeathman) ought to have been President—(Laughter)—he had found himself rather more closely in touch with the Society than he had been previously. (Applause.)

Sir Dennis Herbert, replying, expressed his thanks to Mr. Debenham for a very pleasant evening and recalled that it was thirty years since he first knew him, in the days when he very often had the pleasure of staying in St. Albans. He remarked that, even then, there were occasional grumbles and grouses about what the City Fathers were doing, and these took place at the house at which he was staying. The invariable answer was "Get hold of old Debenham and he will put it right." (Laughter.) As Col. Smeathman had told them, there might have been important gatherings of the City Fathers at the "Peahen," but he had it on the most reliable authority that the real affairs of the City of St. Albans were conducted in the smoking-room of Mr. Debenham's own house.

During dinner, selections were played by Evelyn Hardy's Trio and songs were afterwards delightfully rendered by Miss Lilian Myers (soprano), Mr. Edward Dykes (bass) and Mr. George Buck (entertainer), Miss Myers and Mr. Dykes also contributing a duet. Mr. R. G. Thompson was an efficient accompanist.

### The Guests.

Amongst the guests we observed Sir Charles Longmore, Sir Dennis Herbert, M.P., Lieut.-Colonel Lovel Smeathman, Major P. Elton Longmore, Major E. Montague Jones, The Rev. H. Gathorne Crabtree, M.C., Dr. J. Rammell, Miss Elinor Debenham, Miss Celia Debenham, Mr. Gilbert Debenham, Messrs. Philip R. Longmore (Hon. Secretary and Treasurer of the Hertfordshire Law Society), E. R. Cook (Secretary of The Law Society), H. M. Macey (Registrar of The Law Society), W. G. Marshall (Town Clerk of St. Albans), M. T. Hodding, J. A. Aldred, A. G. L. Gamlen, L. F. Beal, T. Ottaway, J. A. Gallop, W. H. Brightman, L. Gwynne-Jones, J. W. Dickson, L. E. Giffen, T. Anderson Davis, E. F. W. Hieatt (Clerk to the St. Albans Rural District Council), R. J. Wilson, J. Roe, and A. A. Newport (St. Albans); C. S. Tuckey (Clerk to the Harpenden Urban District Council); John A. Longmore and H. S. Hawks (Hertford); N. G. Chalmers Hunt and H. M. Gisby (Ware); W. J. Gee (Bishop's Stortford); G. Maughan (Buntingford); A. F. Bryant (Hoddesdon); F. C. E. Jessop (Waltham Abbey); G. G. Breeze (Cheshunt); W. Hudson (Town Clerk of Watford), F. Wilson, Matthew Arnold, S. J. Weaver, G. Rollo Walker, G. Penman, H. Harrowell and F. L. Newton (Watford); A. J. Adams (Hemel Hempstead); E. H. Sedgwick (Berkhamsted); H. W. Batchelor (Rickmansworth); A. Brooke-Turner (Tring); W. O. Times (Hitchin); R. C. Swaine (Letchworth); W. A. Boyes, H. J. Creed, W. Wright, H. W. Milnes, A. Vyvyan Wells (Barnet); G. B. Johnson (New Barnet); H. Hocombe (Potter's Bar); J. R. Q. Bartlett, H. Swinnerton, Evander Evans, Stanley J. Loe, H. Warren, C. Vance Packman and G. E. Swinnerton.

The staff was represented by Messrs. H. J. Loe (Managing Clerk), E. F. L. Danbury, G. F. Nicholls (Managing Clerk, London Office), Miss A. Baum (Mr. Debenham's Secretary), and Mr. F. Renaut.

Truly a memorable gathering.

## Rules and Orders.

### Supreme Court, England. Procedure.

### The Rules of the Supreme Court (No. 3), 1929.

### Dated 6th December, 1929.

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. Paragraph (2) of Rule 1 of Order XXXVA is hereby revoked and the following paragraph shall be substituted therefor:—

"(2) The District Registries to which this Order applies are the District Registries of—

| | |
|---|---|
| Birkenhead, | Leicester, |
| Birmingham, | Lincoln, |
| Blackburn, | Liverpool, |
| Bradford, | Maidstone, |
| Brighton, | Manchester, |
| Bristol, | Newcastle, |
| Caernarvon, | Newport (Mon.), |
| Cambridge, | Norwich, |
| Cardiff, | Nottingham, |
| Carlisle, | Portsmouth, |
| Carmarthen, | Preston. |
| Chester, | Sheffield, |
| Derby, | Shrewsbury, |
| Durham, | Southampton, |
| Exeter, | Stockton-on-Tees, |
| Gloucester, | Swansea, |
| Hull, | Taunton, |
| Ipswich, | Truro, |
| Leeds, | York, |

and such other District Registries as may be named in any Order made from time to time by the Lord Chancellor, with the concurrence of the President."

2. Rule 8 of Order XXXVIA is hereby revoked, and the following Rule shall be substituted therefor:—

"8. The towns at which divorce business may be taken at the assizes shall be Birmingham, Bodmin, Bristol, Caernarvon, Cardiff (or Swansea when the Glamorgan Assizes are held at Swansea), Carlisle, Carmarthen, Chester, Derby, Durham, Exeter, Gloucester, Ipswich, Leeds, Leicester, Lewes, Lincoln, Liverpool, Manchester, Monmouth, Newcastle, Norwich, Nottingham, Shrewsbury, Winchester and York."

3. The following amendments shall be made in Order LXV:—

(*a*) The following words in Rule 1 shall be omitted:—

"Provided also that, where any action, cause, matter or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter or issue is tried, or the Court, shall, for good cause, otherwise order."

(*b*) Rule 2 is hereby revoked.

(*c*) At the end of Rule 3, after the words "costs in the cause" the following words shall be added:—

"and shall be dealt with under Rule 1 of this Order."

4.—(1) These Rules may be cited as the Rules of the Supreme Court (No. 3), 1929, and the Rules of the Supreme Court, 1883,(*a*) shall have effect as amended by these Rules.

(2) Rules 1 and 2 of these Rules shall come into operation on the 1st day of April, 1930, and the remainder of these Rules shall come into operation on the 1st day of January, 1930.

Dated the 6th day of December, 1929.

*Sankey*, C. *F. H. Maugham*, J.
*Hanworth*, M.R. *T. R. Hughes.*
*Merrivale*, P. *C. H. Morton.*
*P. Ogden Lawrence*, L.J. *Roger Gregory.*
*Rigby Swift*, J.

# In Parliament

## Progress of Bills.

### House of Lords.

Performing Animals (Regulation) Amendment Bill. Second Reading put off *sine die*. 11th December.

Expiring Laws Continuance Bill. Considered in Committee. Bill reported without amendment. 12th December.

Mental Treatment Bill [H.L.]. Amendments reported. 17th December.

Road Traffic Bill [H.L.]. Considered in Committee (Fourth Day). 18th December.

Highlands and Islands (Medical Service) Additional Grant Bill. Read the Third Time and Passed. 18th December.

### House of Commons.

Illegitimate Children (Scotland) Bill. Reported with Amendments from Standing Committee on Scottish Bills. Bill as amended to be considered on Friday, 16th May. 12th December.

Small Landholders (Scotland) Acts (1886 to 1919) Amendment Bill. Read a Second Time and committed to a Standing Committee. 13th December.

Musical Copyright Bill. Select Committee appointed. 13th December.

Unemployment Insurance (No. 2) Bill. Read the Third Time and passed. 16th December.

Consolidated Fund (No. 1) Bill. Read the First Time. 17th December.

Coal Mines Bill. Read a Second Time. 19th December.

## Questions to Ministers.

### TITHE RENTCHARGE.

In reply to a question by Mr. GRANVILLE,

The MINISTER OF AGRICULTURE (Mr. Noel Buxton) said that the question of tithe rentcharge was exhaustively discussed during the passage through Parliament of the Tithe Act, 1925, which was largely based on a compromise between the various interests concerned, and I am not aware that any serious difficulty in the working of the Act has been revealed. The Government is not prepared, therefore, to set up a committee of inquiry into the matter. 11th December.

### ENTERTAINMENTS DUTY.

In reply to a question by Sir W. DE FRECE,

Mr. P. SNOWDEN stated that the net amount of revenue from entertainments duty in each of the months April, May, June and July, 1929, was as follows:—

| | £ |
|---|---|
| April .. .. .. .. .. | 557,221 |
| May .. .. .. .. .. .. | 525,539 |
| June .. .. .. .. .. .. | 400,835 |
| July .. .. .. .. .. .. | 440,087 |

12th December.

### SMALL HOLDINGS.

In reply to a question by Mr. W. TAYLOR,

Mr. N. BUXTON said that the information in the possession of the Ministry does not go to show that, speaking generally, there has been any considerable fall recently in the price of agricultural land suitable for small holdings. I will, however, give careful consideration to my hon. Friend's suggestion. 12th December.

### METROPOLITAN POLICE (TRAFFIC DUTY).

In reply to a question by Mr. DAY,

Mr. CLYNES said that during the twelve months ending 27th November, 1929, the number of Metropolitan Police authorised to be employed permanently on traffic duty has been increased by thirty. The average daily number of police employed on permanent and temporary traffic duty during the week 18th to 24th November was 1,423. The average annual cost per constable (including pension and other charges) is £320, without making any allowance for relief for sickness, etc. There is no definite rule in the Metropolitan Police that traffic duty at special points is to be performed by picked men. 12th December.

### INCOME TAX (CO-OPERATIVE SOCIETIES).

Mr. OSWALD LEWIS asked the Chancellor of the Exchequer whether his attention had been called to the fact that, if a co-operative society invests reserve funds directly in the purchase of land, the income it derives from such land is liable to taxation; whereas if it invests such funds in the shares of a limited liability company making profits from land the income it derives from such shares is not subject to taxation: and, if so, whether the Government propose to take any steps to do away with this discrimination?

The CHANCELLOR OF THE EXCHEQUER (Mr. Philip Snowden): I am aware of the facts stated, but I cannot argue the subject of the taxation of co-operative societies at question time. Opportunity for its discussion will arise in the course of the debates on next year's Finance Bill. 12th December.

### SWEEPSTAKES.

Major COURTAULD asked the Home Secretary whether the Government propose to adopt the same attitude towards Derby sweepstakes as that laid down by the then Home Secretary in this House on 2nd May, 1929?

Mr. CLYNES: The practice for many years past has been not to advise interference with private or quasi-private sweepstakes honestly conducted and, after full consideration, I am of opinion that this practice should continue. 12th December.

### BICYCLES (REFLECTORS).

Colonel HOWARD-BURY asked the Home Secretary whether he is aware that many bicyclists have either no red rear reflectors on their bicycles or else have them placed in a position where they cannot reflect the light; and whether he will take steps to enforce the law in the interests of the bicyclists whose lives are endangered by being invisible?

Mr. CLYNES: Yes, sir, I have taken steps by calling the attention of the police to the matter. 12th December.

### REFUSAL DISPOSAL, LONDON.

In reply to a question by Mr. OLDFIELD,

Mr. GREENWOOD said: I have asked for an early report of the committee on the disposal of London Refuse. I know that the Committee are doing their best to comply with this request, but they have to make some further investigations before they are in a position to report. 12th December.

### AFFORESTATION.

In reply to a question by Major POLE,

Mr. W. R. SMITH said that 600,000 acres of land are owned by or at the disposal of the Forestry Commission. Of these, 237,000 acres are under silvicultural and agricultural cultivation, 200,000 are used for grazing, 40,000 are subject to common rights, and 123,000 are lying idle or used for sporting, the latter figure including rocky and other waste land. The figures given are approximate. 13th December.

# Legal Notes and News.

## Honours and Appointments.

With the approval of His Majesty The King a commission as Deputy-Lieutenant of the County of the City of Edinburgh has been granted to The Right Hon. ROBERT MUNRO, Lord ALNESS, Lord Justice Clerk of Scotland.

At the annual general meeting of the Society of Advocates in Aberdeen, held recently, Mr. M. M. DUNCAN, B.A., B.L., was re-elected President, Mr. A. T. CRUIKSHANK, M.A., Treasurer, Mr. F. W. KAY, M.A., B.L., Secretary, Factor and Librarian, and Mr. CHARLES WILLIAMSON, M.A., Auditor. Mr. Duncan was admitted in 1899, Mr. Cruikshank in 1897, Mr. Kay in 1899 and Mr. Williamson in 1894.

Mr. JOSEPH G. MORRISON, Deputé Procurator-fiscal, Falkirk, has been appointed to succeed Mr. W. K. GAIR as Procurator-fiscal for the Eastern District of Stirlingshire, on the retirement of the latter.

Mr. J. J. CRAIK HENDERSON, LL.B., B.L., Procurator, Glasgow, has been appointed to the Chair of Mercantile Law of Glasgow University, rendered vacant by the death of Professor Thomas G. Wright. Mr. Henderson was admitted in 1928.

Mr. D. V. O'MEARA, Solicitor, Deputy Town Clerk of Dover, has been appointed Deputy Town Clerk of Oxford in succession to Mr. A. C. Fox, recently appointed Deputy Town Clerk of Middlesbrough. Mr. O'Meara was admitted in 1926.

Mr. WILLIAM ADAMS, Solicitor, Saffron Walden, has been appointed Clerk to the Justices of that borough. Mr. Adams, who was admitted in 1887, holds the appointments of Town Clerk, and Clerk to the Justices of the Walden Division of Essex, Superintendent Registrar of Births, etc., Clerk to the Isolation Hospital Board and to the Commissioner of Taxes for the Division of Walden and Freshwell.

## Professional Announcements.

(2s. per line.)

Messrs. SATCHELL, CHAPPLE & SON, Solicitors, 63, Queen Victoria-street, E.C.4, announce that they have amalgamated the practice hitherto carried on by them with that of Messrs. Grahames & Co., of No. 2, Millbank House, Westminster, S.W.1, at which address the practice will in future be carried on under the style of Grahames, Chapple & Co. Telephone: Victoria 1127.

FOR MEN AND WOMEN.

BURBERRYS' ANNUAL SALE.

The annual sale at Burberrys, in Haymarket, is an event looked forward to by men and women in all parts of the country, as any garment bearing the name "Burberry" is always well worth the amount asked for it during the January sale.

We understand that, following their usual custom, Burberrys, during the first month of the New Year, are offering their entire stocks of garments accumulated during the past year, at prices either a little above or below one-half their usual value.

Full particulars of these can be obtained by readers who write to Burberrys (mentioning THE SOLICITORS' JOURNAL), and ask for a copy of the sale catalogue.

# Court Papers.

## Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | MR. JUSTICE EVE. | MR. JUSTICE ROMER. |
|---|---|---|---|---|
| M'nd'y Dec. 23 | Mr. Andrews | Mr. Blaker | Mr. Ritchie | Mr. Blaker |
| DATE. | MR. JUSTICE MAUGHAM. | MR. JUSTICE ASTBURY. | MR. JUSTICE CLAUSON. | MR. JUSTICE LUXMOORE. |
| M'nd'y Dec. 23 | Mr. Jolly | Mr. Hicks Beach | Mr. More | Mr. Andrews |

The CHRISTMAS VACATION will commence on Tuesday, the 24th day of December, 1929, and terminate on Monday, the 6th day of January, 1930, inclusive.

**VALUATIONS FOR INSURANCE.** It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality.

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate (12th December, 1929) 5% Next London Stock Exchange Settlement Thursday, 9th January, 1930.

| | MIDDLE PRICE 18th Dec. | INTEREST YIELD. | | | YIELD WITH REDEMPTION. | | |
|---|---|---|---|---|---|---|---|
| **English Government Securities.** | | £ | s. | d. | £ | s. | d. |
| Consols 4% 1957 or after | 84½ | 4 | 14 | 11 | — | | |
| Consols 2½% | 53 | 4 | 14 | 4 | — | | |
| War Loan 5% 1929-47 | 99¾ | 5 | 0 | 2 | — | | |
| War Loan 4½% 1925-45 | 93 | 4 | 16 | 9 | 5 | 2 | 9 |
| War Loan 4% (Tax free) 1929-42 | 100 | 4 | 0 | 0 | 4 | 0 | 0 |
| Funding 4% Loan 1960-1990 | 85½ | 4 | 13 | 7 | 4 | 14 | 6 |
| Victory 4% Bonds (available for Estate Duty at par) Average life 35 years | 91½ | 4 | 7 | 5 | 4 | 9 | 9 |
| Conversion 4½% Loan 1940-44 | 93½ | 4 | 16 | 3 | 5 | 2 | 6 |
| Conversion 3½% Loan 1961 | 74¼ | 4 | 14 | 3 | — | | |
| Local Loans 3% Stock 1912 or after | 62 | 4 | 16 | 9 | — | | |
| Bank Stock | 248½ | 4 | 16 | 7 | — | | |
| India 4½% 1950-55 | 83 | 5 | 8 | 5 | 5 | 15 | 3 |
| India 3½% | 82½ | 5 | 12 | 0 | — | | |
| India 3% | 52½ | 5 | 14 | 3 | — | | |
| Sudan 4½% 1939-73 | 92 | 4 | 17 | 9 | 4 | 19 | 0 |
| Sudan 4% 1974 | 83 | 4 | 16 | 5 | 4 | 19 | 0 |
| Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years) | 82½ | 3 | 12 | 9 | 4 | 3 | 3 |
| **Colonial Securities.** | | | | | | | |
| Canada 3% 1938 | 84½ | 3 | 11 | 0 | 5 | 3 | 9 |
| Cape of Good Hope 4% 1916-36 | 93 | 4 | 6 | 0 | 5 | 4 | 0 |
| Cape of Good Hope 3½% 1929-49 | 80 | 4 | 7 | 6 | 5 | 2 | 0 |
| Commonwealth of Australia 5% 1945-75 | 91 | 5 | 9 | 11 | 5 | 10 | 3 |
| Gold Coast 4½% 1956 | 92 | 4 | 17 | 10 | 5 | 1 | 0 |
| Jamaica 4½% 1941-71 | 92 | 4 | 17 | 10 | 4 | 19 | 0 |
| Natal 4% 1937 | 92 | 4 | 7 | 0 | 5 | 7 | 6 |
| New South Wales 4½% 1935-45 | 83 | 5 | 9 | 9 | 6 | 5 | 0 |
| New South Wales 5% 1945-65 | 90 | 5 | 11 | 1 | 5 | 12 | 9 |
| New Zealand 4½% 1945 | 93 | 4 | 16 | 9 | 5 | 3 | 9 |
| New Zealand 5% 1946 | 99 | 5 | 1 | 0 | 5 | 2 | 0 |
| Queensland 5% 1940-60 | 90 | 5 | 11 | 1 | 5 | 13 | 9 |
| South Africa 5% 1945-75 | 100 | 5 | 0 | 0 | 5 | 0 | 0 |
| South Australia 5% 1945-75 | 90 | 5 | 11 | 1 | 5 | 12 | 3 |
| Tasmania 5% 1945-75 | 93 | 5 | 7 | 6 | 5 | 8 | 3 |
| Victoria 5% 1945-75 | 90 | 5 | 11 | 1 | 5 | 12 | 3 |
| West Australia 5% 1945-75 | 92 | 5 | 8 | 8 | 5 | 9 | 6 |
| **Corporation Stocks.** | | | | | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 60 | 5 | 0 | 0 | — | | |
| Birmingham 5% 1946-56 | 100 | 5 | 0 | 0 | 5 | 0 | 0 |
| Cardiff 5% 1945-65 | 99 | 5 | 1 | 0 | 5 | 1 | 0 |
| Croydon 3% 1940-60 | 68 | 4 | 8 | 3 | 5 | 2 | 0 |
| Hull 3½% 1925-55 | 76 | 4 | 12 | 1 | 5 | 4 | 0 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | 70 | 5 | 0 | 0 | — | | |
| Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn. | 51 | 4 | 18 | 6 | — | | |
| Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn. | 61 | 4 | 18 | 4 | — | | |
| Manchester 3% on or after 1941 | 61 | 4 | 18 | 4 | — | | |
| Metropolitan Water Board 3% 'A' 1963-2003 | 60 | 5 | 0 | 0 | — | | |
| Metropolitan Water Board 3% 'B' 1934-2003 | 62 | 4 | 16 | 9 | — | | |
| Middlesex C. C. 3½% 1927-47 | 82 | 4 | 5 | 4 | 5 | 1 | 0 |
| Newcastle 3½% Irredeemable | 70 | 5 | 0 | 0 | — | | |
| Nottingham 3% Irredeemable | 60 | 5 | 0 | 0 | — | | |
| Stockton 5% 1946-66 | 100 | 5 | 0 | 0 | 5 | 0 | 0 |
| Wolverhampton 5% 1946-56 | 99 | 5 | 1 | 0 | 5 | 1 | 6 |
| **English Railway Prior Charges.** | | | | | | | |
| Gt. Western Rly. 4% Debenture | 79 | 5 | 1 | 3 | — | | |
| Gt. Western Rly. 5% Rent Charge | 97 | 5 | 3 | 1 | — | | |
| Gt. Western Rly. 5% Preference | 90½ | 5 | 10 | 6 | — | | |
| L. & N. E. Rly. 4% Debenture | 74 | 5 | 8 | 1 | — | | |
| L. & N. E. Rly. 4% 1st Guaranteed | 72 | 5 | 11 | 1 | — | | |
| L. & N. E. Rly. 4% 1st Preference | 64 | 6 | 5 | 0 | — | | |
| L. Mid. & Scot. Rly. 4% Debenture | 77 | 5 | 3 | 11 | — | | |
| L. Mid. & Scot. Rly. 4% Guaranteed | 73 | 5 | 9 | 7 | — | | |
| L. Mid. & Scot. Rly. 4% Preference | 68½ | 5 | 16 | 10 | — | | |
| Southern Railway 4% Debenture | 77 | 5 | 3 | 11 | — | | |
| Southern Railway 5% Guaranteed | 95 | 5 | 5 | 3 | — | | |
| Southern Railway 5% Preference | 86 | 5 | 16 | 3 | — | | |

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YOUNG Solicitor desires position as assistant solicitor; willing to take small salary to gain experience.—Box 273, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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SOLICITOR, Honours 1928, Managing Clerk of London firm, experienced in conveyancing common law, company, probate and general work, desires similar appointment with prospects, preferably Liverpool. Would undertake advocacy. Good salary.—Apply Box 255, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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YOUNG SOLICITOR desires Clerkship with a view to partnership. Experienced in litigation, workmen's compensation and company law; good advocate. Small capital at disposal. Excellent references, "C.," Box 558, Solicitors' Journal, 29 Breams-buildings, E.C.4.

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SOLICITOR (Irish), aged 36, 14 years' experience, good worker, reliable, desires employment in or near London as Managing Clerk or otherwise. Excellent references. Salary by arrangement. Apply "T." Box 549, Solicitors' Journal, 29, Breams-buildings, E.C.4.

GENTLEMAN, accustomed to committee work and shorthand, with experience in reference work under the Rating and Valuation Act, will be free shortly; good worker; reasonable salary if some prospects.—Apply, in first instance, "E.," Box 55, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor (23), November Final, desires post as Assistant Conveyancing and general practice. Trained in busy office.—Write Box 258, Solicitors' Journal, 29 Breams-buildings, E.C.4.

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PRACTISING Solicitor would consider appointment as assistant where proper facilities would be given for the conduct of his own practice on terms. Experience mostly conveyancing and High Court litigation, some advocacy. London only.—Write "M.," Box 353, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ADMITTED Managing Clerk, general practice large city seven years, two years sole charge, desires engagement owing to amalgamation. Specialities: litigation, advocacy. Athletic, bachelor, and insatiable worker.—"M.P.," Box 459, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

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SOLICITOR (2nd Class Honours), with over 30 years' continuous experience in conveyancing, trust and probate work, willing to assist Solicitors by post.—"S." Box 312, Solicitors' Journal, 29, Breams-buildings, E.C.4.

## EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion and the name of this paper.

BUTLER-VALET, thoroughly experienced in all duties; age 42, married, one child (age 9); excellent references. Height 6 feet. Used to large entertaining, shooting, etc. 1131*g*

GENTLEMAN, Ex-Officer, requires post as private secretary-companion, used to accounts and income tax. Practical knowledge management of property. Drive any car. Could teach children games and horsemanship. 11350

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MAJOR (T.F.), retired, old Harrovian, age 35, unquestionable references; 12 years' active business experience, seeks an administrative appointment at home or abroad, preferably with prospects for advancement. Dis. 306

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